

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SYED HOSAIN ALI, §
§
Petitioner, §
§
V. § No. 3:22-cv-785-L-BN
§
MERRICK GARLAND, Attorney §
General of the United States, ET AL., §
§
Respondents. §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Syed Hosain Ali, detained by the U.S. Immigration and Customs Enforcement (ICE) at a facility in Eden, Texas, filed, with the assistance of counsel, an application for a writ of habeas corpus under 28 U.S.C. § 2241 requesting that he be released from custody pending his removal from the United States. *See* Dkt. No. 1. Petitioner paid the applicable filing fee. And United States District Judge Sam A. Lindsay referred this matter to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference.

The undersigned enters these findings of fact, conclusions of law, and recommendation that, because the Court transfer the habeas petition to the Abilene Division of this district, where Petitioner is physically confined.

“In general, ‘[t]he only district that may consider a habeas corpus challenge to present physical confinement pursuant to § 2241 is the district court in which the [petitioner] is confined.’” *Dada v. Witte*, Civ. A. No. 20-1093, 2020 WL 1674129, at *2 (E.D. La. Apr. 6, 2020) (quoting *United States v. McPhearson*, 451 F. App’x 384, 387

(5th Cir. 2011) (per curiam) (citing, in turn, *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43 (2004); *Lee v. Wetzel*, 244 F.3d 370, 375 n.5 (5th Cir. 2001))).

And, “[i]n challenges to present physical confinement,” the United States Supreme Court has “reaffirm[ed] that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Padilla*, 542 U.S. at 439-40 (further noting that, “[i]f the ‘legal control’ test applied to physical-custody challenges, a convicted prisoner would be able to name the State or the Attorney General as a respondent to a § 2241 petition” but, “[a]s the statutory language, established practice, and our precedent demonstrate, that is not the case”).

The Court may transfer a case filed in the wrong district or division “to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a); *see also id.* § 1631; *Middlebrooks v. Smith*, 735 F.2d 431, 432 (11th Cir. 1984) (“Section 1631 is analogous in operation to 28 U.S.C. §§ 1404(a) and 1406(a).”); *Day v. Chandler*, 55 F. App’x 716, 2002 WL 31933183, at *1 (5th Cir. Dec. 20, 2002) (per curiam) (“The Eastern District also properly transferred the petition to the Northern District. *See* 28 U.S.C. §§ 1406(a), 1631.”). And the Court may raise this issue *sua sponte*. *See Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5th Cir. 1989).

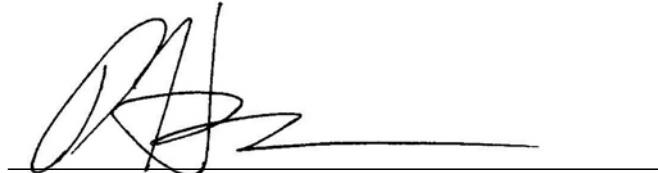
Here, because, when he filed this matter, Petitioner was physically confined at an ICE facility in Eden, Texas, in Concho County, within the Abilene Division of this judicial district, *see* 28 U.S.C. § 124(a)(4), the Court should transfer his habeas petition to that division of this district under Sections 1406(a) and 1631.

Recommendation

The Court should *sua sponte* transfer this habeas action to the Abilene Division of this judicial district.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. And any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).* In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: April 7, 2022



DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE